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*Application to Appear Pro Hac Vice to be filed*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION**

**SARAH MILES**, as Personal Representative  
of the Estate of Derrick Dewayne Clark Jr.;  
and **SARAH MILES** in her individual  
capacity,

Plaintiffs,

v.

**CLACKAMAS COUNTY**, a municipal  
corporation; **DANIEL FERGUSON**,  
**ZACHARAY COLE**, **ALEXANDER  
MAWSON**, AND **OFFICERS DOES I – X**,

Defendants.

NO.

**COMPLAINT WITH JURY DEMAND**

**PRELIMINARY STATEMENT**

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3       1.       On June 18, 2022, just before his twenty-fifth birthday, Derrick Dewayne Clark,  
4 Jr. (“Derrick Clark”) was shot in the back by two police officers. Though the officers shot at  
5 him eight times as he ran away, Derrick did not die immediately. As he lay near the officers,  
6 moaning for help, numerous officers who were trained to provide him with medical aid ignored  
7 his moans.

8       2.       This is a civil action for monetary relief against Clackamas County, Clackamas  
9 County Sheriff’s Deputy Daniel Ferguson, Oregon State Patrol Trooper Zachary Cole, and  
10 others, for violating Derrick Dewayne Clark, Jr.’s civil rights by subjecting him to unreasonable  
11 and excessive force by shooting him in the back and then leaving him to die slowly while  
12 officers laughed, made jokes, referred to him as an animal and “old boy”, and otherwise ignored  
13 his suffering and rejected his humanity.

14       3.       This action also seeks monetary relief against the same defendants for  
15 unlawfully depriving Derrick Clark’s mother, Sarah Miles, of the society and companionship  
16 of her son.

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**JURISDICTION AND VENUE**

4. This Court has original jurisdiction over the plaintiffs' civil rights claims under 42 U.S.C. § 1983, under 28 U.S.C. § 1331 (federal question) and under 28 U.S.C. § 1343. This Court has supplemental jurisdiction over the plaintiffs' related state claims under 28 U.S.C. § 1367(a).

5. Venue is proper in this jurisdiction under 28 U.S.C. § 1391(b) because all of the events supporting the plaintiffs' allegations occurred in this judicial district and because the defendants reside here.

**PARTIES**

6. Plaintiff Sarah Miles, in her representative capacity, is the duly appointed Personal Representative of the Estate of Derrick Dewayne Clark, Jr., filed under the laws of the State of Oregon, Clackamas County Circuit Court Cause No. 23-PB00262.

7. Plaintiff Sarah Miles, in her individual capacity, is the mother of Derrick Dewayne Clark, Jr. (deceased), is a citizen of the United States, and a resident of the State of Oregon.

8. Defendant Clackamas County is a municipality in the State of Oregon and owns, operates, manages, directs, and controls the Clackamas County Sheriff's Office, which employs Defendant Daniel Ferguson, Alexander Mawson, and others.

9. Defendant Daniel Ferguson is a United States Citizen residing in the State of Oregon. At relevant times Defendant Ferguson was a police officer with the Clackamas County Sheriff's Office, an employee of Clackamas County, and was acting within the course and scope

1 of his employment. All acts committed by Defendant Ferguson were done under color of the  
2 laws of the State of Oregon and under the authority of his position as a police officer with the  
3 Clackamas County Sheriff's Office.

4 10. Defendant Zachary Cole is a United States Citizen residing in the State of  
5 Oregon. At relevant times Defendant Cole was a trooper with the Oregon State Patrol, an  
6 employee of the State of Oregon, and was acting within the course and scope of his  
7 employment. All acts committed by Defendant Cole were done under color of the laws of the  
8 State of Oregon and under the authority of his position as a police officer with the Oregon State  
9 Patrol.

10 11. Defendant Ferguson and Defendant Cole are collectively referred to as the  
11 "Shooter Defendants."

12 12. Defendant Alexander Mawson is a United States Citizen residing in the State of  
13 Oregon. At relevant times Defendant Mawson was a police officer acting on behalf of the  
14 Clackamas County Sheriff's Office, an employee of Clackamas County, and was acting within  
15 the course and scope of his employment. All acts committed by Defendant Mawson were done  
16 under color of the laws of the State of Oregon and under the authority of his position as a police  
17 officer with the Clackamas County Sheriff's Office.

18 13. Defendants Officers Does I-X (the "Officer Doe defendants") are officers  
19 employed by the Clackamas County Sherriff's Office and are employees of Clackamas County  
20 acting within the course and scope of their employment. All acts committed by the Officer Doe  
21 defendants were done under color of the laws of the State of Oregon and under the authority of  
22

1 their positions as police officers with the Clackamas County Sheriff's Office. The Officer Doe  
2 defendants, or some of them, were the commanding officers in charge of the scene and directly  
3 supervised all of the responding law enforcement officers, including by issuing directives and  
4 radioing each of the officers who responded throughout the incident.

### 5 **FACTUAL ALLEGATIONS**

6 *The Shooter Defendants engage in unauthorized*  
7 *road pursuit, ram Mr. Clark's vehicle into a ditch*  
8 *and then shoot eight rounds at his back as he runs*  
*away, mortally wounding him.*

9 14. At approximately 12:51 a.m. on the morning of June 18, 2022, Derrick Clark  
10 was driving a maroon Pontiac Grand Am (Pontiac) in Happy Valley, Oregon. His front and rear  
11 lights were on. He was operating his vehicle at the speed limit.

12 15. As Mr. Clark proceeded to drive Southeast on OR2-13 (in the right lane) he was  
13 followed by Oregon State Trooper Zachary Cole ("Cole").

14 16. Cole, who was behind the Pontiac, activated his red and blue overhead lights to  
15 pull over the Pontiac. The Pontiac did not pull over, and Trooper Cole deactivated his lights  
16 because he did not have the authority to pursue the Pontiac.

17 17. Moments later, Defendant Ferguson drove past Trooper Cole's vehicle to pursue  
18 the Pontiac. He did not activate his lights. Cole joined in the pursuit.

19 18. At 12:53:07, Ferguson activated his red and blue overhead lights while driving  
20 down Southeast Harmony Road, and then Cole reactivated his red and blue overhead lights and  
21 continued following Ferguson, with both of them engaging in a high-speed pursuit.

1           19.     At 12:54:03, on the dispatch call, Ferguson was ordered by his supervisor to stop  
2 pursuing the Pontiac.

3           20.     Despite being instructed by his supervisor to end the pursuit, Ferguson continued  
4 to pursue the Pontiac.

5           21.     At 12:54:15, Mr. Clark pulled over. Because he had stopped the Pontiac near a  
6 ditch, he proceeded to back up to avoid the ditch.

7           22.     While he was backing up, Ferguson intentionally rear-ended the Pontiac back  
8 toward the ditch. He did this twice in five seconds, knocking the Pontiac into the ditch.

9           23.     A few seconds later, Mr. Clark (a Black man) opened the driver's side door of  
10 the Pontiac, exited the vehicle, and started to run away from the direction of Deputy Ferguson  
11 and Trooper Cole.

12           24.     Trooper Cole fired a round from his handgun (round 1) at Mr. Clark as he was  
13 running away. Deputy Ferguson then fired another round (round 2) at Mr. Clark as he was  
14 running away. Mr. Clark continued to run away. The Shooter Defendants then began to chase  
15 Mr. Clark on foot.

16           25.     As Mr. Clark continued running away from the Shooter Defendants, the Shooter  
17 Defendants stopped running and resumed shooting at Mr. Clark. Deputy Ferguson fired two  
18 more rounds at Mr. Clark (rounds 3 and 4), and Trooper Cole then fired another round at Mr.  
19 Clark (round 5). As Mr. Clark continued to run away, Deputy Ferguson shot another round  
20 (round 6) at him. Trooper Cole then shot at Mr. Clark again (round 7), followed by another shot  
21 from Deputy Ferguson (round 8).

1           26. All eight shots were fired at Mr. Clark while he was running away from the  
2 Shooter Defendants.

3           27. After the eighth shot, Mr. Clark fell near a fence on the opposite side of the  
4 railroad tracks. He stopped moving. Deputy Ferguson reported the shooting over the radio at  
5 12:55:21.

6                           *Clackamas County Sheriff's Deputy D. Ferguson,*  
7                           *Oregon State Trooper Z. Cole, and the Clackamas*  
8                           *County Sheriff's Office and its deputies fail to*  
9                           *render aid to Mr. Clark who is moaning for help.*  
                          *Rather, the Clackamas County employees decide*  
                          *to stand around make jokes, laugh, and allow Mr.*  
                          *Clark to slowly bleed out and die.*

10           28. Following Deputy Ferguson's report of the shooting, the Shooter Defendants  
11 continued to surveil the scene. As of 12:55:28, Trooper Cole told dispatch that Mr. Clark's body  
12 was on the other side of the railroad tracks and on the ground near a fence. He was not moving.

13           29. Rather than provide Mr. Clark with medical care, the individual Shooter  
14 Defendants proceeded to reload their firearms at the scene.

15           30. By 1:02 a.m., over fifty law enforcement officers were at the scene of the  
16 shooting, most of them were from the Clackamas County Sheriff's Office. Rather than provide  
17 Mr. Clark with medical care, the law enforcement officers proceeded to laugh, make jokes, refer  
18 to Mr. Clark as an animal and a "boy," launch explosives at his motionless body, and release a  
19 police dog to bite his body.

20           31. As of 1:09:20, nobody had rendered medical aid to Mr. Clark.  
21  
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1           32.     At 1:10:40, deputies could hear Mr. Clark moaning for help. No aid was  
2 rendered.

3           33.     At 01:26:40, CCSO Deputy Hector Campos and Deputy Kyle Scott, who were  
4 securing the perimeter near where Mr. Clark's body had fallen, could be heard laughing.

5           34.     At 01:30:10, more than thirty minutes after the last shot was fired, an overhead  
6 drone deployed by other officers at the scene showed that Mr. Clark had not moved. Shortly  
7 thereafter the drone operators observed that Mr. Clark was lying in his own blood. At 01:33:48,  
8 drone operator and Clackamas Deputy Tooze stated "there is no reason to rush this," to Deputy  
9 A. Clark. Moments later Deputy Tooze admits over the radio that Mr. Clark has not moved  
10 "since [A. Clark & Tooze] have laid eyes on him."

11           35.     No aid was rendered to Mr. Clark at that time.

12           36.     At 1:39:21, Tooze, A. Clark, and Oregon City Police Department (OCPD)  
13 Officer Brian Willard revisit their initial thoughts that Mr. Clark man is laying in his own blood  
14 is correct; they confirm then repeat that there has been "zero movement."

15           37.     No aid was rendered to Mr. Clark at that time.

16           38.     At 1:52:30, drone operators A. Clark and Tooze confirm that Mr. Clark has not  
17 moved.

18           39.     No aid was rendered to Mr. Clark at that time.

19           40.     At 1:56:14, A. Clark is discussing vehicle positioning. During the discussion he  
20 and other deputies exchange laughter while Mr. Clark continues to lay on the ground. No aid is  
21 rendered to Mr. Clark.



1           41.     At 2:15:30, CCSO SWAT responders gathered at a nearby commercial parking  
2 lot several feet away from where Mr. Clark had collapsed. They acknowledged to each other  
3 that Mr. Clark had not moved and was lying prone.

4           42.     The Clackamas County responders failed to render aid to Mr. Clark. Rather, they  
5 threatened additional force on Mr. Clark and threw explosive devices at Mr. Clark to elicit a  
6 response. When no response was elicited, they threw another explosive device at him.

7           43.     At 2:35:10, CCSO responders instructed Mr. Clark to “waive your arms if you  
8 can hear us”, to which CCSO Deputy Alexander Mawson responded: “He dead” and compared  
9 Mr. Clark’s body to a “warm dead deer” while laughing. Shortly thereafter, CCSO Deputy  
10 Mawson laughed about Mr. Clark’s body, stating “He’s flying supine!” Another deputy  
11 questioned whether Mr. Clark’s body was “actually a person”.

12           44.     No aid was rendered to Mr. Clark at that time.

13           45.     At 2:38:32, CCSO Deputies threw another explosive device at Mr. Clark and the  
14 device exploded. CCSO Deputies again confirmed there was no movement. In response, Deputy  
15 Mawson again stated “He dead” and proceeded to belch.

16           46.     No aid was rendered to Mr. Clark at that time.

17           47.     At 2:41:33, a CCSO responder joked to his colleagues that Mr. Clark swallowed  
18 fentanyl, causing laughter.

19           48.     No aid was rendered to Mr. Clark at that time.

20           49.     At 2:43:54, CCSO deputy Mawson stated, about Mr. Clark, that “This ole boy  
21 is dead.” And then stated that the CCSO is “just going to do some janky shit and get it done.”  
22

1           50.     At 2:44:52, Deputy instructed Mr. Clark to come out with his hands up or a dog  
2 would be sent towards him and that the dog would bite him, to which another deputy responds  
3 “let’s just bite him already.”

4           51.     Shortly thereafter, at 2:45:15, CCSO Deputy Mawson stated, “This ole boy is  
5 no longer with us.” And another CCSO Deputy responded, “And he’s going to have a dog bite.”

6           52.     At 2:46:30, Mawson again said, about Mr. Clark, “He dead....He might be  
7 laying lower than a snake in a top hat as they say,” and then laughed. A minute later Mawson  
8 again referred to Mr. Clark as an “ole boy”.

9           53.     At 2:52:13, CCSO SWAT responders looked at a drone image of Mr. Clark’s  
10 body lying on his back and determined he was unconscious or dead. Again, no aid was rendered  
11 to Mr. Clark at that time.

12          54.     At 2:52:32, CCSO SWAT responders approach Mr. Clark’s body, release a dog,  
13 and the dog bites Mr. Clark’s body. CCSO Deputy Dennis Kishbaugh then stated that Mr. had  
14 been “smoked.”

15          55.     Mr. Clark’s time of death was reported as 2:53AM by the Clackamas County  
16 Medical Examiner.

17          56.     From the moment the last shot was fired until Mr. Clark’s body was found dead,  
18 approximately 120 minutes had lapsed.

19          57.     During that entire period, nobody rendered aid to Mr. Clark.

20          58.     Mr. Clark died as a direct result of the failure of any law enforcement officer to  
21 render aid or to allow aid to be rendered to him.

1           59.     The use of force used on Mr. Clark was excessive and unreasonable and included  
2 the unlawful use of deadly force, which proximately caused Mr. Clark to experience severe pain  
3 and suffering and proximately caused his death.

4           60.     The unlawful use of force also caused Plaintiff Sarah Miles to be deprived of her  
5 constitutional right to society and companionship of her son.

6           61.     The individual defendant-officers, as well as the other participating employees  
7 of the Clackamas County Sheriff's Office (including the Officer Doe defendants), were not  
8 adequately trained in the constitutional limitations on the use of force. Throughout their  
9 encounter with Mr. Clark, the individual defendant-officers acted intentionally, knowingly,  
10 maliciously, and recklessly in violation of Mr. Clark's well-established constitutional rights  
11 under the Fourth and Fourteenth Amendments to the United States Constitution.

12           62.     The Officer Doe defendants exercised control over, directed, facilitated,  
13 affirmatively approved and acquiesced in the unconstitutional misconduct of the defendant-  
14 officers.

15           63.     None of the individual defendant-officers or Officer Doe defendants involved  
16 were disciplined by the Clackamas County Sheriff's Office. The unlawful use of excessive  
17 force by the individual defendant-officers was carried out in accordance with the policies and  
18 procedures of the Clackamas County Sheriff's Office and the official policies, customs, and  
19 practices of Clackamas County.

## **CLAIMS AGAINST CLACKAMAS COUNTY**

### **Excessive Force**

(42 U.S.C. § 1983: Fourth and Fourteenth Amendments)

64. The plaintiffs repeat and re-allege paragraphs 1 through 63 of this complaint as if fully set forth herein.

65. As a result of the allegations contained herein, Clackamas County is liable to the Estate of Derrick Clark for violating Derrick Clark's Fourth and Fourteenth Amendment rights through the acts of the individual defendant-officers in unlawfully subjecting Mr. Clark to excessive, unreasonable, and deadly force and for unlawfully causing his death on June 18, 2022.

#### **Failure to Provide Medical Care**

(42 U.S.C. § 1983: Fourteenth Amendment)

66. The plaintiffs repeat and re-allege paragraphs 1 through 65 of this complaint as if fully set forth herein.

67. As a result of the allegations contained herein, Clackamas County is liable to the Estate of Derrick Dewayne Clark, Jr. for violating Mr. Clark's Fourteenth Amendment rights through the acts of the individual defendant-officers and Officer Doe defendants in failing to provide necessary medical care to Mr. Clark and in their deliberate indifference to Mr. Clark's medical needs, causing his suffering and death on June 18, 2022.

#### **Loss of Society and Companionship**

(42 U.S.C. § 1983: Fourteenth Amendment)

69. As a result of the allegations contained herein, Clackamas County is liable to Plaintiff Sarah Miles for violating her Fourteenth Amendment right to society and companionship of their son, Derrick Clark, by unlawfully causing his suffering and death on June 18, 2022.

70. The plaintiffs repeat and re-allege paragraphs 1 through 69 of this complaint as if fully set forth herein.

## Negligence

73. As a result of the allegations contained herein, Clackamas County is vicariously liable to the Estate of Derrick Dewayne Clark, Jr. for negligence.

## Excessive Force

COMPLAINT  
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1 for violating Mr. Clark's Fourteenth Amendment rights by failing to provide necessary medical  
2 care to him and in their deliberate indifference to his medical needs.

3  
4 **Loss of Society and Companionship**

(42 U.S.C. § 1983: Fourteenth Amendment)

5 80. The plaintiffs repeat and re-allege paragraphs 1 through 79 of this complaint as if  
6 fully set forth herein.

7 81. As a result of the allegations contained herein, each of the individual defendants is  
8 liable to Plaintiff Sarah Miles for violating her Fourteenth Amendment right to the society and  
9 companionship of their son, Derrick Clark, by unlawfully causing his death on June 18, 2022.

10 **JURY DEMAND**

11  
12 Plaintiffs demand a trial by jury.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, the plaintiffs pray that the Court award:

15 A. Compensatory and consequential damages to the Estate of Derrick Dewayne  
16 Clark, Jr., in an amount to be proven at trial;

17 B. Compensatory damages to Plaintiff Sarah Miles, individually, for the loss of  
18 the society and companionship of her son, in an amount to be proven at trial;

19 C. Punitive damages, in an amount to be proven at trial;

20 D. Reasonable attorneys' fees, costs, and prejudgment interest incurred in  
21 pursuing this action as provided for in 42 U.S.C. § 1988; and

1 E. Any such other relief that this Court deems just and equitable under the  
2 circumstances of this case.

3 DATED this 1<sup>st</sup> day of December 2023.  
4

5 GRUBE OREHOSKI, PLLC

6 By: /s/ Joseph A. Grube  
7 Joseph A. Grube, OSB 962976  
8 Attorneys for Plaintiffs

9 HERMANN LAW GROUP

10 By: /s/ Mohammad "Mo" Ali Hamoudi  
11 Mohammad "Mo" Ali Hamoudi  
12 Attorneys for Plaintiffs

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